89-12

U.S. Department of Labor
Program Highlights

Fact Sheet No. OSHA 89-12

VARIANCES UNDER OSHA

At times employers may not be able to comply fully with a new safety or health standard in the time provided due to a shortage of personnel, materials or equipment. In other cases, employers sometimes are using methods, equipment or facilities that differ from those prescribed by OSHA, but that the employer believes are equal to or better than OSHA's requirements. In situations such as these, employers may apply to OSHA for a temporary variance from the standard. In applying for a permanent variance, the employer must be able to show that his/her facility or method of operation provides employee protection "at least as effective as" that required by OSHA's standard.

Temporary Variance

The temporary variance mechanism is used when an employer cannot comply with OSHA requirements by the prescribed date because the necessary construction or alteration of the facility cannot be completed in time or when technical personnel, materials or equipment are temporarily unavailable.

To be eligible for a temporary variance, the employer must put in force an effective program for coming into compliance with the standard or regulation as quickly as possible.

In the meantime, the employer must demonstrate to OSHA that all available steps are being taken to safeguard employees.

o Identify the standard or portion of a standard from which the variance is requested;

o State the reason(s) why the employer cannot comply;

o Document measures already taken and those to be taken (including dates) to comply with the standard;

o Certify that workers have been informed of the variance application and that a copy has been given to the employees' authorized representative;

o Post a summary of the application wherever notices are normally posted in the workplace; and

o Inform employees that they have a right to request a hearing on the application.

Temporary variances will not be granted to employers who merely assert they cannot afford to pay the costs of coming into compliance.

Permanent Variance

A permanent variance may be granted to employers who prove their methods, conditions, practices, operations or processes provide a safe and healthful workplace as effectively as compliance with the standard.

In making a determination on a permanent variance, OSHA reviews the employer's evidence and where appropriate arranges a visit to the workplace to confirm the circumstances of the application. If the request has merit, OSHA may grant a permanent variance. Final variance orders detail the employer's specific responsibilities and requirements and explain exactly how the employer's method varies from the OSHA requirement.

When an employer applies for a permanent variance, he/she must inform employees of the application and their right to request a hearing. Applications for permanent variance must contain essentially the same information as for temporary variance requests.

This is one of a series of fact sheets highlighting U.S. Department of Labor programs. It is intended as a general description only and does not carry the force of legal opinion.

L 35.24:

READEX FICHE best copy available

Interim Order

An employer may apply to OSHA for an interim order for either a temporary or permanent variance so that he/she may continue to operate under existing conditions until a final decision is made on the application for variance. Application for an interim order may be submitted with the application for a variance or separately.

If the interim order is granted, the terms of the order are published in the Federal Register. The employer must inform employees of the order by giving a copy to the authorized employee representatives and posting a copy wherever notices are normally posted.

Experimental Variance

The experimental variance may be used by an employer to demonstrate or validate new or improved safety and health techniques. These variances are developed in close cooperation with the OSHA Office of Variance Determination.

Defense Variance

Another type of variance, not used to date, permits OSHA to grant "reasonable variations, tolerances and exemptions to and from" the Act's requirements "to avoid serious impairment of the national defense." Defense variances may not be in effect for more than six months without notifying employees and offering a public hearing on the issues.

Participation

Employees, other employers and other interested groups are encouraged to participate in the variance process. Notices of variance applications are published in the Federal Register inviting all interested groups to comment on the action.

# # #

★U.S. Government Printing Office: 1989-241-368/08070